

for failing to provide information relating thereto after requested, for refusing to process a grievance relating thereto and for failing to hold a "Level B" grievance meeting as provided in the CBA. The Board filed its answer on September 24, 1997 after which this matter was heard by the PELRB on November 19, 1997.

FINDINGS OF FACT

1. The Merrimack School Board is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Merrimack Teachers Association, NEA-New Hampshire, is the duly certified bargaining agent for all full time and part time contracted teacher personnel employed by the Board.
3. The Association and the Board are parties to a collective bargaining agreement (CBA) for the period ending on June 30, 1996 "and from year to year thereafter unless written notice of desire to terminate or modify...is given." It is undisputed that this CBA is the operative document for the time pertinent to this case since no subsequent school contracts have been approved by the voters of the Merrimack School District. (Board Exhibit No. 1).
4. Several portions of the CBA are pertinent to this case. Article 7.9 of the contract says, "The Board shall notify teachers of their contract and salary status by the following dates unless extended by mutual agreement; Teachers excluding nurses: March 31; Nurses: May 31." Article IX is devoted to the grievance procedure. Article 9.3 addresses the "formal procedure." "Level B" of that formal procedure says, "Within five (5) days of a grievance being referred at this level, the Superintendent, if at grades 1 through 8, or the principal, if at grades 9 through 12, will meet with the participants of Level A and examine the facts of the grievance. The principal or Superintendent shall give his/her answer within five (5) days of any such meeting...." Article 9.12 provides, in pertinent part, "Non-renewal of teachers, excluding nurses, under the

appropriate RSA's shall not be subject to the Grievance and Arbitration provisions of this Agreement." Appendix F to the CBA addresses "Reduction in Force and Recall Policy," establishes six (6) classifications for layoffs and defines the use and calculation of seniority in this process.

5. Association Grievance Chair Kenneth Monteith testified that on April 10, 1997, during an unrelated meeting at the middle school, he learned that an undisclosed number of then unnamed teachers had received non-retention notices. Approximately a week before another meeting Monteith had with Association president Susan Ruggeri and Superintendent James O'Neil on May 13, 1997, Monteith mentioned the non-renewal notices and the Article 7.9 provisions to O'Neil. At that time, O'Neil confirmed the April 9, 1997 notice date and that there were "twenty-ish" such notices.
6. On May 13, 1997, O'Neil, Ruggeri and Monteith had an informal grievance meeting as contemplated under Article 9.3, "Level A" of the contract. During this meeting, according to Monteith's testimony, he asked O'Neil for a list of the teachers who were non-renewed, the dates of those notices and copies of the letters themselves which contained the text of the notices. O'Neil told Monteith that the request should be in writing. On May 14, 1997, Monteith made a written request for (a) a list of all teachers not retained/renewed, (b) the dates each notification was received, (c) who provided the notification and (d) a copy of the notification itself. (Association Exhibit No. 1) By letter of May 16, 1997, O'Neil wrote to Monteith saying, in pertinent part, "I am denying your request because the information you seek is of a personnel nature and therefore can not be made available to you." (Association Exhibit No. 2)
7. On May 28, 1997, the Association filed a grievance about the non-retentions/non-renewals. (The grievance documents are not part of the record in this case. It is the PELRB's understanding that the grievance was processed, progressed to hearing

and that an arbitrator's award has been rendered on this grievance matter, all of which is outside these proceedings.)

8. On or about June 6, 1997, O'Neil provided two lists to the Association, one being a roster of the teachers employed during the 1996-97 school year and another being a list of the teachers projected to be employed during the 1997-98 school year. In those instances where it was apparent that a given teacher(s) was not returning, one could not determine the cause for that teachers' not returning, i.e., whether job change, retirement, resignation, non-renewal or otherwise. O'Neil testified that each list was in alphabetical order and consisted of 12 to 14 pages. He also said that none of the District's 320 employees was given notice of their 1997-98 contract status by March 31st in 1997 because the voters had not approved the school budget by that date.
9. O'Neil acknowledged not holding a "Level B" grievance meeting under Article 9.3 of the contract after the grievance was filed. After reading Article 9.12 of the contract (Finding No. 4, above), he did not believe the subject matter was grievable; therefore, he felt that meeting was no longer necessary or required.
10. The grievance arbitration hearing (Finding No. 7, above) was held on or about September 15, 1997, at which time, and in conjunction therewith, the Board supplied the Association with nine (9) letters of non-renewal, an example of which was admitted as Association Exhibit No. 3. Thirteen additional letters which had been issued in April were not provided to the Association at this time because those notifications of non-renewal had since been revoked and the teachers impacted by them re-offered employment for school year 1997-98

DECISION AND ORDER

We address three separate issues in this decision. First, there is the issue of the contractually agreed upon notification date of March 31st. (Finding No. 4.) While the Board's request

for findings indicates that tentative agreements negotiated in both 1996 and 1997 extended this date to April 15th, those tentative agreements had not been funded and were not in place when the 1997 non-renewal notices were sent out on April 9, 1997 (e.g., Association Exhibit No. 3). Thus, at that point, the parties were still bound by Board Exhibit No. 1 as to notification dates. This is as pertinent for Article 7.9 as it is for wages under Appendix A pertaining to the salary schedule for the contract. When the notices failed to meet the contractually-agreed-to deadline of March 31st, there was a breach of the CBA. This breach is also a ULP under RSA 273-A:5 I (h). We urge the parties to adhere to whatever contract notification date they have negotiated.

Second, Article 9.3 of the contract calls for a "Level B" grievance meeting as part of the "formal procedure" for that process. The "formal procedure" contemplates that the grievance shall "set forth names, dates and any other related facts." It follows the "free and informal communications" of Article 9.2 of the contract. Failure to honor a request for a meeting at "Level B" after the grievance is filed is inconsistent with the wording and purposes of the grievance procedure, is a breach of contract, and is a violation of RSA 273-A:5 I (h). One cannot rely on the Article 9.2 meeting, even though it may involve exactly the same individuals, to fulfill the requirements of the Article 9.3 "Level B" meeting. Under the contract, there is an expectation that this meeting be held. It, likewise, provides one additional opportunity for the parties to come to closure over the dispute prior to exhausting the steps of the grievance procedure.

Third and last is the issue of the information requested, orally and in Association Exhibit No. 1. As the "exclusive representative of a bargaining unit," the Association has the "right to represent employees in collective bargaining negotiations and in the settlement of grievances." RSA 273-A:11 I. We believe this is inclusive of the Association's right to administer its rights under the CBA. In order to administer those rights, the Association must not be unreasonably denied access to information. Even though the Board, through the superintendent, has argued that non-renewal such as those at hand are not subject to the grievance and arbitration process because of Article 9.12, as the Association pointed out, there may be other areas of the contract which have been violated. The notification date under Article 7.9 and the procedures of the RIF clause in Appendix F are two such examples. It was unreasonable

to withhold information from the Association relating to the names of teachers and dates of receipt of non-renewal notices. If the withholding of this information until the September, 1997 arbitration hearing were to have prompted another grievance(s), certainly the public employer would have asserted it was not timely under the contract, Article 9.10. Failure to provide the requested names and dates violated RSA 273-A:11 I and, thus, was a ULP under RSA 273-A:5 I (g). The Board shall provide such information, in a straight-forward format, when requested under similar circumstances in the future. On the other hand, it need not provide copies of the letters of notification. That is an individual matter between teachers and their exclusive bargaining agent, with it being left to the determination of individual teachers whether they elect to provide copies of their individual correspondence to the Association.

Based on the foregoing, we find that the Board has committed ULP's by violating RSA 273-A:I (g) and (h). It shall CEASE and DESIST from doing so forthwith and it shall comply with negotiated notification dates and requests for information relating to non-renewed employees consistent with this decision.

So ordered.

Signed this 25th day of November . 1997.


 JACK BUCKLEY
 Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
 Members E. Vincent Hall and Seymour Osman present and voting.